DOCUMENT RESUME

ED 336 860 EA 023 344

TITLE	An Introduction to School Finance. Special Legislative Report Number 157.
INSTITUTION	Texas State Legislature, Austin. House Research Organization.
PUB DATE	23 Feb 90
NOTE	62p.
PUB TYPE	Legal/Legislative/Regulatory Materials (090) -- Reports - Research/Technical (143)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*Educational Equity (Finance); *Educational Finance; Elementary Secondary Education; Full State Funding; Property Taxes; School Funds; *School Taxes; *State Aid; *State School District Relationship; Tax Rates
IDENTIFIERS	*Texas

ABSTRACT

On October 2, 1989, the Texas Supreme Court, in the "Edgewood v. Kirby" decision, found the current school-finance system unconstitutional. The evolution of this decision, through its early origins, the establishment of the current structure (1949-81), House Bill 72 (1984), and Senate Bill 1019 (1989), is described. Also described are the workings of the Texas school finance system, including funding of local districts, permanent and available school funds, the Foundation School Program (First Tier), Guaranteed Yield Program (Second Tier), and Categorical State Aid. Federal and state court litigation over the school-finance system during the past 20 years is detailed. School-finance proposals in the forms of additional education spending by the state, a countywide tax base, caps on local enrichment, recapture (redistribution) of local revenues, distribution of available school fund, transitional funding, state aid for capital expenditures, changing weights for special programs, dedication of additional money to fund formulas, increased teacher salaries, and school-district consolidation are summarized from various organizations and individuals who have responded to the "Edgewood" decision. Finally, an overview is given of recent school-finance changes in other states, including Kentucky, Montana, and New Jersey. (19 references) (RR)

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AN INTRODUCTION TO SCHOOL FINANCE

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February 23, 1990

Number 157

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Tom Whatley, Director

February 23, 1990 Number 157

AN INTRODUCTION TO SCHOOL FINANCE

Last year the Texas Supreme Court found the current system of financing public schools unconstitutional and gave the Legislature until May 1, 1990 to devise a new system. Gov. Bill Clements has called the Legislature into special session, beginning Feb. 27, to consider the issue of school finance.

This special legislative report, by Dick Lavine, describes the current school-finance system and how it evolved, reviews the Supreme Court's Edgewood v. Kirby decision, describes various recent proposals for revising the system and examines how other states have handled similar legal challenges to their school-finance systems.

The report concentrates exclusively on school finance -- the distribution of state and local funding for public education. Other issues that might be considered during the course of revising the school-finance system -- such as ensuring adequate accountability for the spending of public education dollars and devising new incentives and program options to spur educational innovation -- are not covered in this report.

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CONTENTS

	Page
INTRODUCTION	1
EVOLUTION OF THE TEXAS SCHOOL FINANCE SYSTEM	2
Early Origins of Texas Public Education	2
Establishment of the Current Structure (1949-1981)	3
Foundation program created	3
Districts consolidated	3
State aid increased	3
Equalization aid added	4
House Bill 72 (1984)	5
Salary steps created	5
Foundation School Program adjustments	6
New equalization formula	6
Senate Bill 1019 (1989)	6
Guaranteed-yield allotment	7
Allotment adjustments	7
Salary schedule adjustments	7
HOW THE TEXAS SCHOOL FINANCE-SYSTEM WORKS	8
The Local District Structure	8
Funding of Local Districts	8
Permanent and Available School Funds	9
Permanent School Fund	9
Available School Fund	9

The Foundation School Program -- First Tier 10
Basic allotment 10
Price differential index 10
Low-enrollment adjustment 10
Weighted pupil allotments 11
Career ladder funding 12
Transportation allotment 12
Local share of the basic Foundation School Program 12
Guaranteed Yield Program -- Second Tier 13
Categorical State Aid 14
Proration of State Aid 15
Locally Funded Expenses 15
Maintenance and operations taxes 16
Debt-service taxes 16
Average total tax rate 16
State guarantee for bonds 17
The Texas School-Finance System -- diagram 17A
LEGAL CHALLENGES TO THE TEXAS SCHOOL-FINANCE SYSTEM 18
Federal Court Litigation 18
State Court Litigation 18
Lower courts 18
The Texas Supreme Court ruling 20
Factual background 20
Interpretation of 'efficient' 21

Requirements for a new plan 22
Meeting the deadline 23
Interpretations of the Supreme Court Opinion 24
SCHOOL-FINANCE PROPOSALS 25
Additional Education Spending 25
Increasing the basic allotment and the local fund assignment 26
New emphasis on guaranteed yield 28
Governor's task force 29
State Board of Education 29
Uribe-G. Luna plan 30
Texas Research League 30
Equity Center plan 30
Haley-Bullock plan 30
Countywide Tax Base 31
Texas Research League plan 32
Uribe-G. Luna plan 32
Debate over countywide tax base 32
Caps on Local Enrichment 34
Recapture (Redistribution) of Local Revenues 36
Distribution of Available School Fund 36
Transitional Funding 37
State Aid for Capital Expenditures 38
Changing Weights for Special Programs 39

Dedication of Additional Money to Fund Formulas 40
Current shortfall 40
Education spending priority 40
Increased Teacher Salaries 41
School-District Consolidation 41
How to Measure Equity 42
Equity measures 43
Federal Fiscal Neutrality Measure 43
"R-squared" measure 43
Equity goals 44
RECENT SCHOOL-FINANCE REFORM IN OTHER STATES 46
Kentucky 46
Montana 47
New Jersey 47
Other States 50
SELECTED REFERENCES 52

INTRODUCTION

On Oct. 2, 1989 the Texas Supreme Court, in the Edgewood v. Kirby decision, found the current school-finance system unconstitutional. The court gave the Legislature until May 1 to enact a constitutional plan. If a satisfactory plan is not enacted by that date, the commissioner of education and comptroller may be enjoined from distributing state aid to local school districts under the current school-finance system.

Texas is one of several states whose school-finance systems recently have been challenged in court. Courts in at least nine states have ordered reforms, and school-finance suits are pending in at least nine others. The Kentucky General Assembly, for instance, is considering reform of all aspects of its school system, from finance to class curriculum and teaching techniques, in response to a state supreme court ruling that the "entire system of common schools" is unconstitutional.

Since the Texas Supreme Court's ruling in the Edgewood case, various proposals for revising the school-finance system have been offered for consideration by the Legislature.

This report focuses on how the current public school system is financed and how it might be changed in response to the Supreme Court's deadline. It outlines the evolution and structure of the existing Texas school-finance system, summarizes the Supreme Court's ruling in the Edgewood case, describes some of the plans and concepts that have been proposed in response to the ruling and examines some recent school-finance changes adopted in other states.

EVOLUTION OF THE TEXAS SCHOOL FINANCE SYSTEM

Early Origins of Texas Public Education

The Constitution of the Republic of Texas, adopted in 1836, required the new nation "to provide by law, a general system of education." When Texas became a state in 1845, its Constitution provided:

> A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, it shall be the duty of the Legislature of this State to make suitable provisions for the support and maintenance of public schools.

As the school-finance system developed in the ensuing decades, almost all of the funding was provided at the local level. A community could provide any program it could fund locally; otherwise, there might be no local school at all; state support was, at best, meager.

The state Constitution of 1876, still in effect, requires the Legislature (in Art. 7, sec. 1) to provide an "efficient system of public free schools." Nonetheless, a permanent public education system was not established until the enactment of the School Law of 1909. That law required the formation of school districts in every county, allowed the districts to levy taxes by a majority vote (rather than a two-thirds vote), raised the limit on local property tax rates from 20 cents to 50 cents per $100 valuation and allowed district voters to approve bonded indebtedness. In 1909 the state had about 8,500 school districts. High schools were not established in rural areas until 1911, and school attendance did not became compulsory until 1918. Separate schools for blacks and whites existed until desegregation began in the 1950s.

Establishment of the Current Structure (1949-1981)

The current Texas school-finance system follows a structure established in 1949 with the adoption of the proposals of the Gilmer-Aikin Committee. The committee had been established by the Legislature two years earlier to suggest reforms in the state's public-school-finance system, which many feared would be unable to generate sufficient revenue to meet the pressures of rapid post-war increases in school enrollment and living costs.

Foundation program created

The committee recommended a "foundation" program intended to provide every school district with enough money to offer at least a basic educational program. This Minimum Foundation Program (MFP) initially was financed 80 percent by the state and 20 percent by the local districts. Local districts, then as now, paid almost the entire cost of school construction and other capital needs.

A county economic index was used to assign each district its proportionate share of the local portion of the MFP. The district share was in the form of a "chargeback," called the Local Fund Assignment. A local district's share of the Local Fund Assignment was subtracted from, or charged back against, the total amount of foundation-program funds it was entitled to receive; the remainder was paid by the state. Local districts were permitted to use additional local tax revenue to "enrich" their programs beyond the foundation program.

Districts consolidated

The Legislature required that all dormant school districts, which existed solely as tax havens, be attached to active districts. The number of school districts in the state dropped from 5,145 in 1947-48 to 2,245 by 1951-52. (The consolidation trend continued during the following decades; the state now has about 1,055 school districts with taxing authority.)

State aid increased

The Gilmer-Aiken laws increased state aid substantially, from $101 per student in 1948-49 to $174 per student in 1956-57. However, weaknesses eventually appeared in the new structure: the county economic index did not adequately measure local district wealth; small, low-tax-rate districts that might otherwise have been absorbed by consolidation instead were perpetuated by the increased state aid; and the amount of state aid failed to keep pace with rising standards and education costs.

In 1968 a special committee appointed by Gov. John Connally and chaired by Houston attorney Leon Jaworski recommended expanding the MFP and substantially increasing state aid. It also proposed consolidating school districts, increasing teacher salaries and replacing the county economic index with a measure of local property values. Only the proposal to raise salaries was enacted.

Equalization aid added

In 1973 the U.S. Supreme Court in the Rodriguez decision (see page 18) upheld the constitutionality of the state's public-school-finance system. But the court's majority strongly urged the Texas Legislature to improve the system.

In 1975 the Legislature enacted HB 1126, which renamed the Minimum Foundation Program the Foundation School Program (FSP) and added to it a second level, or "tier," of state foundation-program aid. This second component, called State Equalization Aid, was designed to bolster spending in districts with relatively low per-pupil property values and to make per-pupil spending among districts more nearly equal across the state.

HB 1126 required that Local Fund Assignments be based on the actual market value of taxable property in each district, rather than on a county economic index. It also doubled the local share of the total foundation program and increased total funding by $1 billion. HB 1126 increased average state aid per pupil by more than 30 percent; most of this increase went to districts with relatively low property wealth.

In a July 1977 special session, the Legislature adopted SB 1, which lowered the Local Fund Assignment, adjusted State Equalization Aid, included vocational and special education personnel in the FSP calculations and added another $1 billion to the FSP. Aid per student increased by 24 percent in the next school year, but it was distributed generally without regard to local district property wealth because of the decreased Local Fund Assignment, "hold-harmless" provisions of the bill that guaranteed that districts would not lose funding, and a new emphasis on per-capita apportionment. Expenditures per student were similar throughout the state, although the district tax effort required to fund this spending varied widely.

Legislation enacted in 1979 to implement the Tax Relief Amendment (SB 621 and HB 1060) focused on the taxpayer side of school finance. The Legislature greatly expanded the number of property tax exemptions, established countywide central tax appraisal districts to bring about uniformity in assessments, and opened the possibility of local tax rollback elections. The FSP was revised to lower the Local Fund Assignment, expand state aid and revise the transportation-aid system.

House Bill 72 (1984)

On the last day of the 1983 regular session, the Legislature adopted HCR 275, establishing a new Select Committee on Public Education. Gov. Mark White named Dallas businessman H. Ross Perot as chair. Many of the recommendations of the committee were adopted in a 1984 special session as provisions of HB 72. Although public attention mainly focused on aspects of HB 72 that did not directly affect the finance system -- such as the temporary replacement of the elected State Board of Education with a smaller, appointed board (which reverted to elected status in 1988) and the "no-pass, no-play" restriction on extracurricular activities -- the new law also made numerous changes in the basic school-finance structure.

The foundation program was retained and expanded. State aid is now distributed based on the average number of pupils in daily attendance rather than by the former system of "personnel units" that reflected the number of teachers, administrators and other district employees. The number of pupils in average daily attendance is multiplied by "weights" to increase funding for those using more expensive programs such as special education, compensatory education, bilingual education and vocational education. These special programs previously had been funded outside the foundation program, by per-capita or categorical grants.

The basic allotment per student in average daily attendance (ADA) was set at $1,290 in 1984-85 and $1,350 thereafter. HB 72 required the State Board of Education to determine the "accountable costs" per student of quality education programs for each two-year state budget period and to recommend a basic allotment for each year. The basic allotment is adjusted by a price differential index (PDI) to reflect variations in costs and price levels among different areas of the state. The basic allotment also is adjusted to assist small districts (enrollment less than 1,600 ADA) and sparsely settled districts.

Salary steps created

HB 72 revised the state minimum salary schedule for teachers to exclude administrative and support positions. Ten salary steps were created, with the minimum starting salary set at $15,200 per year, an increase from $11,100. Local districts may supplement the minimum salaries with local funds.

A state-funded "career ladder" program was established to augment salaries based on merit. Also, an experienced-teacher allotment was added to the foundation program to offset any incentive to hire lower-paid teachers created by the shift from a personnel-unit approach to a weighted-pupil approach.

Foundation School Program adjustments

The total cost of the FSP is limited by a "sum certain" ceiling in each two-year appropriations bill. Rather than granting the FSP a priority claim on state funds, FSP allocations are to be reduced proportionately if the entitlements for all districts exceed the "sum certain" amount appropriated.

The total statewide local share of the FSP is 33.3 percent. The local share obligation of individual school districts, which in 1975 had been set at a fixed rate per district, is determined by the taxable value of property per student within each district compared to the average value statewide.

Certain revenue that had been dedicated by statute to the Available School Fund was dedicated instead to the Foundation School Fund. This change reduced state aid to a small group of property-rich districts because Available School Fund money is distributed on a per-student basis, regardless of the wealth of the district, while some districts have such high property wealth that they receive no state aid from the Foundation School Fund.

New equalization formula

An Enrichment Equalization Allotment was created to replace State Equalization Aid. The new formula for allotting state equalization funds was designed to reward districts making a relatively high tax effort. The amount of equalization aid was significantly increased.

The state mandated three new programs: prekindergarten programs for disadvantaged four-year-olds, summer bilingual education for preschoolers, and a maximum class size of 22 students in grades K-4. Special funding for driver education, school-community guidance centers and student teacher supervisors was eliminated.

Senate Bill 1019 (1989)

In the closing minutes of the 1989 regular session, the 71st Legislature enacted SB 1019, which increased state spending for public education by $450 million for fiscal 1990-91. The bill also revised the method of calculating equalization aid to property-poor districts and raised minimum teacher-salary levels.

SB 1019 increased the basic first-tier allotment under the FSP from $1,350 per pupil in average daily attendance in fiscal 1989 to $1,477 in fiscal 1990 and $1,500 thereafter. The Local Fund Assignment was maintained at 33.3 percent of the Foundation School

Program. For the first time, districts were required to pay for their entire local share as a prerequisite for receiving state FSP funds.

Guaranteed-yield allotment

SB 1019 replaced the Enrichment Equalization Allotment with a guaranteed-yield allotment. Each district is guaranteed a specified amount of revenue per weighted student for each cent that the local district tax rate exceeds the required Local Fund Assignment (LFA) rate (currently 34 cents per $100 of taxable property value). The bill set the guaranteed yield at $18.25 per pupil per one-cent of tax rate. For example, if a district can raise only $8.00 per student from its one-cent of tax, the state will provide an additional $10.25. The guaranteed-yield allotment is provided only for operating tax rates up to 36 cents more than the Local Fund Assignment rate. (Since the LFA tax rate is now 34 cents, state aid under the guaranteed-yield allotment starts at 35 cents and ends at 70 cents.)

Allotment adjustments

The adjustments to the basic allotment to reflect higher costs found in certain areas of the state and for small and sparsely populated districts were revised. The price differential index was updated for use in the 1989-90 and 1990-91 school years. It will be replaced in 1991-92 by a Cost of Education index (COE), to be recommended by the State Board of Education. The small-district adjustment will be retained for the 1989-90 and 1990-91 school years, then will be replaced by the COE index. The per-student "weights" that provide additional funding for students with special needs also were adjusted.

Salary schedule adjustment

SB 1019 increased each step of the minimum salary schedule for education professionals by $180 per month ($1,800 for a standard 10-month contract). The career ladder allotment to districts was changed from $140 per pupil, which included $35 for non-teacher salary supplements and $35 to be used for any legal purpose, to $90 per student, which may be used only to fund the career ladder. The experienced-teacher allotment was eliminated.

HOW THE TEXAS SCHOOL-FINANCE SYSTEM WORKS

The Local District Structure

The basic unit for financing and administering public education in Texas is the local school district. The state has about 1,055 regular school districts. Six special districts located on military bases or prisons operate schools but do not levy local taxes. While some of the state's 254 counties are served by countywide school districts, most contain two or more. Most of the state's major cities are divided among more than one school district; school district boundaries need not follow city or county lines. Procedures for consolidation or division of districts are contained in the Education Code and generally fall under the jurisdiction of county commissioners courts and local voters.

Funding of Local Districts

Revenue to local school districts from all sources in 1988-89 totaled $14.07 billion. Money from federal sources accounted for about 7.6 percent of total public education receipts in Texas in 1988-89, or $1.07 billion. Federal funds usually are designated for specific purposes, such as educating handicapped students or providing school lunch programs. State funds accounted for 40.8 percent of school receipts in 1988-89 ($5.74 billion), and local revenue supplied 44.3 percent ($6.23 billion). Most of the the remaining $1 billion in revenue was from bond proceeds, which accounted for 7.1 percent of education receipts.

State spending on public elementary and secondary education accounts for approximately 28 percent of all state expenditures. Every school district receives state aid distributed from the Available School Fund, according to the number of students in average daily attendance. But the bulk of state support for education is provided through the two tiers of the Foundation School Program (FSP). The proportion of state FSP aid provided to the districts varies depending on the wealth and size of the district and the type of student being educated.

Local districts levy taxes to raise their share of the FSP and may raise additional revenue for local "enrichment" purposes and to retire bonds issued to finance school facilities.

Local revenue available for spending per pupil varies widely among districts, despite various "equalization" formulas used by the

state. For example, the Whiteface district (261 students) had $10,413 in revenue per student in 1987-88, while the Floresville district (2,328 students) had only $2,430 per student. The state average was $3,513 per student.

Permanent and Available School Funds

Permanent School Fund

The Permanent School Fund (PSF) (Tex. Const., Art. 7, sec. 5) was created in 1854 as a perpetual trust fund for the public schools. In 1876 half the land owned by the state was placed in the fund, and in 1899 all remaining state public land was donated. Submerged coastal tidelands have since been included as public domain.

Royalties from the sale of oil and natural gas on PSF land, plus other sale and rental income, are retained in the PSF and invested in corporate and government stocks and bonds. Any capital gain (appreciation in value) on fund investments is retained as part of the PSF. The book value of the fund (original cost of investments) was $6.78 billion at the end of fiscal 1989; the market value was $9.09 billion.

Available School Fund

The interest and dividend income earned by the PSF ($614.8 million in fiscal 1989) is deposited in the Available School Fund (ASF), created by the Constitution of 1876 (Tex. Const. Art. 7, sec. 5). The Constitution also dedicates one-quarter of all motor-fuel tax revenue to the ASF; other revenue is dedicated to the ASF by statute. In fiscal 1989 the ASF received $614.8 million from the PSF and $371.3 million from the General Revenue Fund, a total of $986.1 million.

A portion of the ASF, $112.5 million in fiscal 1989, is transferred to the State Textbook Fund (Tex. Const., Art. 7, sec. 3), which provides free textbooks to children attending public schools. The remainder of the fund is distributed to the local school districts on a per-student basis, without regard to the district's wealth, size or location or the characteristics of the student population. In fiscal 1989 school districts received $205.39 from the ASF for each student in average daily attendance. The ASF distribution to each district is a "chargeback" against, i.e. subtracted from, the amount each district is entitled to receive under the Foundation School Program.

The Foundation School Program -- First Tier

The first tier of the Foundation School Program (FSP) -- the basic FSP -- is intended to guarantee sufficient financing for all school districts to provide a basic program of education that meets standards for accreditation and other legal requirements. The amount of the FSP for each district is based on its relative property wealth and the characteristics of its student population.

The state pays for its share of the Foundation School Program from the Foundation School Fund, which was created in 1947 (Education Code sec. 16.260) to receive money from the General Revenue Fund for distribution to the school districts. It is estimated that General Revenue Fund transfers to the Foundation School Fund will total $4.17 billion in fiscal 1990 and $4.21 billion in fiscal 1991 for the Foundation School Program. (In fiscal year 1989 the Foundation School Fund received $4.21 billion from the General Revenue Fund, plus $8.7 million in temporary fees and $20 million in unexpended special-fund balances allocated to the fund.)

Basic allotment

The amount distributed from the Foundation School Fund to each school district is determined by a complex set of formulas. The calculation is built on a basic allotment, set at $1,350 per student for the 1985-86 through the 1988-89 school years and increased by SB 1019 (71st Legislature, regular session) to $1,477 for 1989-90 and $1,500 for 1990-91.

Price differential index. The basic allotment is adjusted by a "price differential index" to reflect geographic variations in educational resource costs that are beyond the control of the school district. The resulting figure is known as the "adjusted basic allotment."

Under SB 1019 the price differential index is scheduled to be replaced with a "cost of education" index in the 1991-92 school year, to be developed by the State Board of Education.

Low-enrollment adjustment. The adjusted basic allotment may be increased for districts with fewer then 1,600 students in average daily attendance, with an additional adjustment depending on the physical size of the district. The result is the "adjusted allotment," which is intended to compensate low-enrollment districts for their higher operating costs. "Sparse districts," with enrollment of fewer than 130 students, are guaranteed a minimum small-district adjustment, depending on the number of grade levels in the district and the distance to the nearest high school. (Under SB 1019, the

small-district adjustment will be replaced by the Cost of Education (COE) index to be developed by the SBOE, beginning with the 1991-92 school year.)

The basic allotment, adjusted by the price differential index and the small-district or sparse-area adjustment (where applicable) to yield an adjusted allotment, is multiplied by the number of students in average daily attendance to determine a district's basic entitlement. The state share of the basic entitlement is distributed to school districts as a block grant to be used to finance the district's operating costs. The estimated total cost of the basic entitlement for fiscal 1990 is $9.47 billion.

Weighted pupil allotments

In addition to the basic entitlement block grant, districts receive extra funds for students in special education, vocational education, programs for the gifted and talented, compensatory education and bilingual education. These additional distributions are determined by multiplying the number of students in each special program by a weight assigned to each program. A regular student is given a weight of 1.00, a vocational education student a weight of 1.45, and a special education student a weight determined by the student's instructional arrangement, ranging from 2.00 to 7.11.

Under SB 1019, the current weights for vocational education and special education are scheduled to be replaced in 1991-92 by new weights more closely correlated to costs. The weight for compensatory education (for students enrolled in federal school lunch programs) was retained, but the SBOE is to develop a new series of weights for students in remedial education programs, students at risk of dropping out and pregnant students, for use beginning with the 1991-92 school year. Also under SB 1019, districts no longer may use the bilingual education allocation to pay for teacher salaries.

The program weights for other special categories are "add-ons" that are less than 1.0 per student and are added to the basic entitlement received by a district. The weight for bilingual education is 0.1 per student, the weight for compensatory education (for children in the national school lunch program) is 0.2, and the weight for children in a program for gifted and talented students is .047 for the 1989-90 school year and .12 thereafter.

The estimated additional cost for the special program allotments in the 1989-90 school year is $1.30 billion. Special education accounts for $621.4 million, compensatory education for $392.9 million, and vocational education for $240.5 million. Bilingual

education allotments will cost $36.5 million and gifted and talented programs will cost $10.8 million.

Career ladder funding

The teacher career ladder, adopted in 1984, establishes four levels of "merit" salary supplements that teachers are to receive depending on their performance, experience, job-related education, advanced academic training and job assignment. Starting in the 1989-90 school year, each district receives $90 per (unadjusted) student to be used for career ladder salary supplements for teachers. From 1984 until 1989 each district received $140 per student, of which $70 was for career ladder supplements, $35 for salaries of personnel other than classroom teachers, and $35 that could be used for any legal purpose.

The annual career-ladder salary supplements are $2,000 per year for level 2, $4,000 for level 3 and $6,000 for level 4. If state money earmarked for the career ladder is not sufficient to fully fund the program, school districts may reduce the supplements (to $1,500 for level 2, $3,000 for level 3 and $4,500 for level 4) and/or use stricter standards than those outlined in law for placement on the career ladder.

Transportation allotment

Districts also may receive a transportation allotment based on the cost per pupil of operating a bus system and the "linear density" of the system, which is based on the number of miles of bus routes in the district and the number of students transported on each route.

Local share of the basic Foundation School Program

The sum of the basic entitlement block grant, the special program allotment based on student weights, the career ladder allotments and the transportation allotments determines the total cost of the first tier of the FSP -- the basic program. This cost is shared between the state and local districts through the Local Fund Assignment process.

A minimum property-tax rate is calculated so that, if all districts tax at that rate, the total amount of local revenue raised statewide will equal 33.3 percent (one-third) of the total statewide cost of the FSP each year. For example, the estimated total FSP cost for 1989-90 is $6.46 billion. The local fund assignment is one-third of the total cost, or $2.15 billion. This local share is divided by the State Property Tax Board's estimate of total taxable property value in all the districts ($646.1 billion as of Jan. 1, 1988) to arrive at the tax rate necessary to raise the local share statewide.

A tax rate of 34 cents per $100 of property value levied on $646.1 billion in property value will raise a statewide total of approximately $2.15 billion. Every district must levy at least a 34 cent tax (its contribution to to statewide Local Fund Assignment) in order to receive state aid.

Although the total amount of revenue raised statewide by all school districts using the 34-cent tax rate equals 33.3 percent of the total FSP statewide cost, the local percentage share of its FSP amount that each district must pay varies widely, depending on its tax yield. Each district's local fund assignment -- the amount it can raise at the minimum tax rate -- is subtracted (along with its Available School Fund distribution) from the district's FSP amount to determine how much of that amount the state will pay (the "state share").

Since a property-poor district can raise much less per student with a 34 cent tax rate than can a property-wealthy district, the state share of the district's total FSP costs in a property-poor district accounts for a larger proportion of the district's FSP amount per pupil than the state share of a property-wealthy district's FSP amount. For example, in District A, the 34-cent rate may raise enough revenue to cover only 15 percent of the FSP amount to which it is entitled; the state will pay 85 percent of the district's FSP cost. In District B, the 34-cent rate may raise enough to cover 75 percent of the FSP; in that district, the state will cover 25 percent of the district's FSP cost. But when all of the revenue raised by every district at the 34-cent rate is added together, it will total 33.3 percent of the total statewide FSP cost.

Among the state's approximately 1,060 school districts, about 73 are "budget-balanced districts" that receive no FSP aid from the state because their property value per student is so high that a 34-cent tax rate raises enough to pay for their entire local share of the foundation program.

Guaranteed Yield Program -- Second Tier

The state offers a second tier of aid under the Foundation School Program -- "equalization" funding, distributed through the Guaranteed Yield Program. According to the Education Code, the second tier is intended "to provide all school districts with substantially equal access to funds to provide an enriched program," in contrast to the first tier, which "guarantees sufficient funding for all school districts to provide a basic program of education that meets accreditation and other legal standards." The Guaranteed Yield Program is based on the number of weighted students in the district and the district's tax rate and property wealth.

SB 1019 repealed the former second-tier Enrichment Equalization Aid Allotment that had distributed state aid to relatively property-poor districts according to their number of students, FSP entitlements, tax rate and property wealth. It replaced it with the Guaranteed Yield Program, which guarantees each district a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the local fund assignment, up to a specified maximum level. Additional taxes beyond those required to be levied for the local fund assignment are known as the "district enrichment tax rate."

The Guaranteed Yield Program currently guarantees each district that it will receive $18.25 per weighted student in state and local funds for each cent of tax effort over the tax rate required for the local fund assignment (34 cents per $100 property valuation in 1989-90), up to 36 cents in additional tax effort (for a total maximum tax rate of 70 cents). Tax effort greater than the required LFA rate, plus 36 cents, is not matched by the state.

Under the Guaranteed Yield Program, each district can raise as much as $657 per weighted student ($18.25 x 36) above its basic Foundation School Program amount if it sets its tax rate at the maximum 36 cents above the required LFA rate, regardless of its local property values. If the district's property value per student is too low to generate the full $18.25 of revenue per pupil for each one cent of additional tax, the state makes up the difference. If the district can generate more than the $18.25 guaranteed amount, the state will not provide additional aid. The Texas Education Agency estimates that 65 percent of the pupils in the state are in districts that receive funds under this program, which cost the state $692.8 million in 1989-90. Money received under the Guaranteed Yield Program, unlike first-tier FSP allocations, may be used for capital outlays and debt service.

SB 1019 also guarantees that, for the 1989-90 school year, a district will not receive less per student in guaranteed-yield state funds than the amount of "enrichment equalization" aid funds it received in 1988-89 under the former second-tier program, which assisted relatively property-poor districts.

Categorical State Aid

The state provides additional "categorical" aid beyond the FSP to local districts for certain special programs. The largest of the academic programs is the pre-kindergarten program for students with limited English proficiency, which may cost up to $55 million per year in 1989-90 and in 1990-91. The state also purchases textbooks for

free distribution to local school districts, funded by transfers from the Available School Fund to the State Textbook Fund, for a cost of $116.7 million in the 1988-89 fiscal year.

The state also makes contributions to the Teacher Retirement System, saving the districts a large proportion of the cost of retirement system contributions. In fiscal year 1989-90, the state will contribute 7.65 percent of total teacher payroll, for an estimated cost of $736.1 million. In addition, the state will pay an estimated $42.2 million to match members' contributions to the Texas Public School Retired Employees Group Insurance Program. In fiscal 1989-90 TRS contributions are expected to account for more than 13 percent of all state spending for public education.

The experienced teacher allotment, which was designed to assist districts in attracting and retaining experienced teachers, was repealed in 1989.

Proration of State Aid

HB 72 (1984) established a "sum certain" ceiling on state costs under the Foundation School Program. If the total state share of the FSP, as determined by the formulas governing the program, is greater than the total amount appropriated by the Legislature to the FSP for that year, each district's allocation of state funds must be reduced according to a formula adopted by the State Board of Education. The board must consider each district's taxable property value, its effective tax rate, its amount of delinquent taxes and any other factors the board considers relevant.

Locally Funded Expenses

About 44 percent of the money spent by school districts is raised locally, mainly by levying property taxes or by borrowing through bond sales. (Food services, athletic tickets and investments also supply a small percentage of local revenue.) The local money is used to fund the Local Fund Assignment as part of the first tier of the Foundation School Program, to provide local enrichment matched by the state through the second-tier Guaranteed Yield Program, to provide additional enrichment that is not matched by the state and to pay off bonded debt and otherwise fund capital outlays such as construction, furniture, equipment, vehicles and land.

The state does not provide money directly for capital outlays, which accounted for about 11 percent of an average district's total expenditures in 1988-89. Debt service on bonds issued to support capital investment accounted for another 7 percent.

Maintenance and operations taxes

School districts raise the revenue to finance their Local Fund Assignment and local enrichment through local maintenance and operations (M&O) taxes on property within the district. The M&O tax rate cannot be higher than $1.50 per $100 of assessed property value. The state average M&O tax rate was 76.8 cents per $100 in 1988, up from 60.7 cents in 1983.

Debt-service taxes

Funds to retire bonded indebtedness are raised from a separate tax levy -- the interest and sinking fund rate, commonly called the "debt service" rate. The debt service rate is not capped by law, although the amount of bonds a district may issue is limited to 10 percent of the assessed valuation of property in the district. The state average debt-service tax rate was 14.4 cents per $100 in 1988, up from 12.1 cents in 1983.

The outstanding debt of Texas school districts totaled $6.56 billion at the close of 1987-88, twice the school-district debt of any other state. The average debt per pupil was $2,008, but varied widely among individual districts. According to the Texas Research League, no long-term debt was reported by 238 of about 1,055 school districts; another 550 districts reported debt of less than $1,000 per pupil in 1988.

Average total tax rate

The average total school-district tax rate (combined M&O and debt service rates) increased from 72.8 cents per $100 valuation in 1983 to 91.2 cents per $100 in 1988. In 1988, 295 districts had a true tax rate (stated rate, adjusted for local appraisal practice variations) of $1.00 or more, compared to 42 districts in 1983, while the number of districts with a rate of less than 50 cents decreased from 366 in 1983 to 41 in 1988. The total amount raised by school district property taxes increased from $3.63 billion in 1983 to $5.58 billion in 1988. School district taxes accounted for 53 percent of all property tax revenue collected in the state, including city, county and special district taxes.

The burden of the property tax is borne primarily by homeowners and businesses. In 1988, owners of single-family residential property paid 33.8 percent of school taxes. Businesses paid 46.0 percent, through taxes levied on commercial and industrial real estate, business personal property, utilities and multi-family residential property. Oil, gas and mineral owners, who paid 15.3 percent of school taxes in 1981, accounted for only 6.6 percent by 1988.

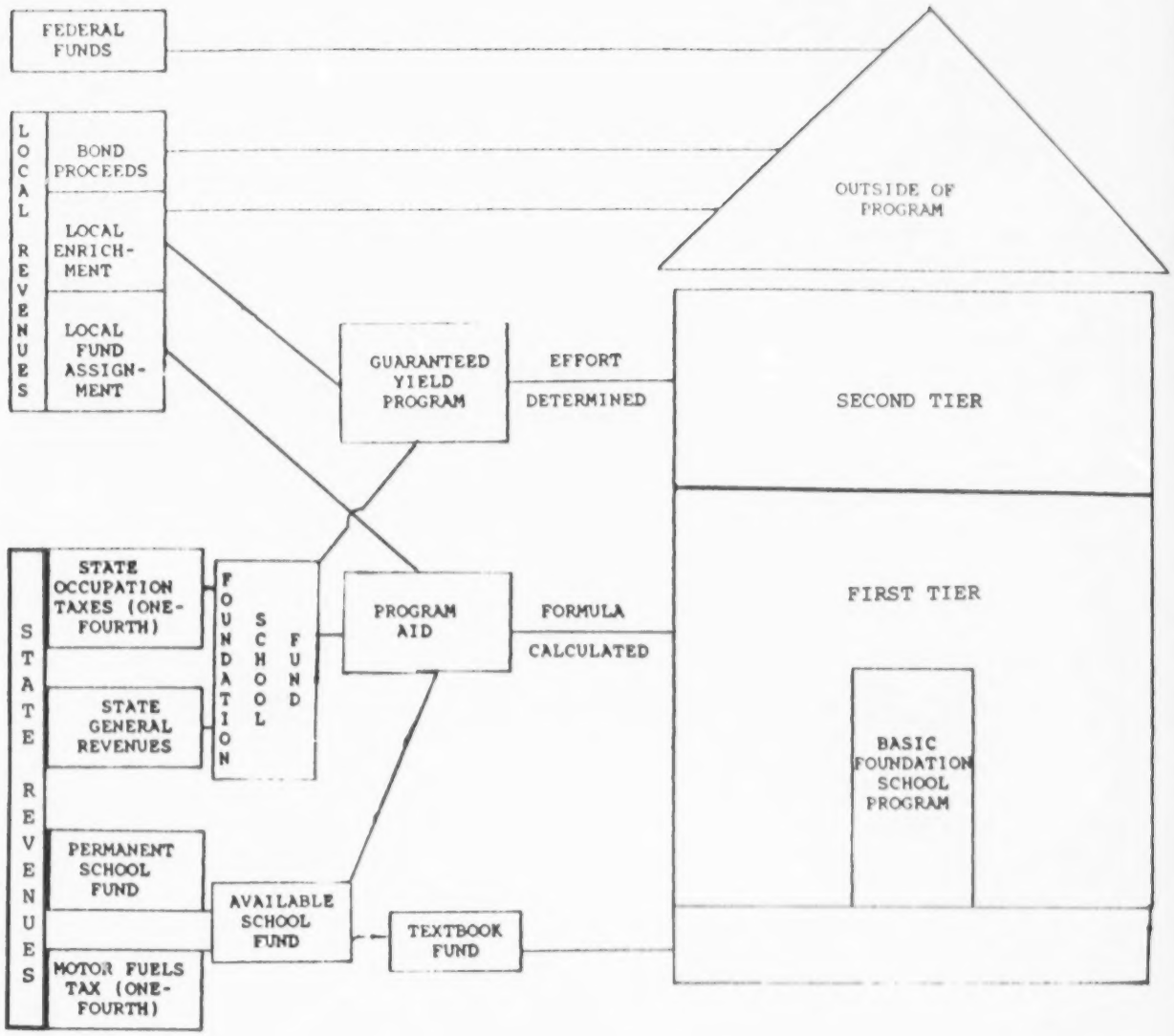
Taxpayers may petition for a "rollback" election whenever a school district proposes increasing its tax revenues by more than 8 percent over the prior year's level. If 10 percent of the district's voters sign a petition, a referendum must be held. If successful, a rollback election limits a school district's tax rate for the following year to an 8 percent revenue increase.

State guarantees for bonds

Capital outlays and debt service on bonds for capital outlays account for 18 percent of an average district's expenditures. While no state aid is allocated directly for facilities and other capital expenditures, since 1983 the Permanent School Fund has been permitted to guarantee the repayment of bonds issued by local school districts, under certain circumstances (Tex. Const., Art. 7, sec. 5 (b)), which makes these bonds a more attractive investment. As of Aug. 31, 1989, a total of 240 bond issues totaling $817.4 million had been guaranteed through the program. Of these, 25 issues worth $66.9 million were issued or approved in fiscal year 1989.

In November 1989, state voters approved Amendment No. 12, changing the Constitution to authorize the Legislature to use the PSF to guarantee repayment of up to $750 million in school facility bonds issued by the state, rather than by the districts. The state bond proceeds may be used to make loans to, or purchase the bonds of, school districts for buying, building, improving or furnishing instructional facilities. (Rules governing the program were adopted by the Bond Review Board in January. The issuance date for the bonds will be determined by the demand, as shown by the number of applications received.)

THE TEXAS SCHOOL-FINANCE SYSTEM



(Adapted from a diagram prepared by Office of Rep. James Hury)

LEGAL CHALLENGES TO THE TEXAS SCHOOL-FINANCE SYSTEM

Federal Court Litigation

The Texas system of public-school finance has been the subject of litigation for more than 20 years. In 1968 a federal lawsuit was filed by Mexican-American parents whose children attended the public schools of the Edgewood Independent School District in Bexar County, on behalf of all Texas school children who were members of minority groups, came from low-income families or lived in school districts with a low property tax base. A three-judge federal court in 1971 held that the school-finance system was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

In 1973 the U.S. Supreme Court by 5-4 reversed the lower-court decision and upheld the Texas school-finance system (Rodriguez v. San Antonio Independent School District, 411 U.S. 1).

The court's opinion turned on its interpretation of the equal protection clause, not on its approval of the Texas system, which one concurring justice described as "chaotic and unjust." The majority found that education was not a "fundamental" right guaranteed by the U.S. Constitution. Therefore, under the equal protection clause, a school-finance system would be considered constitutional if it could be justified as bearing a "rational relationship to a legitimate state purpose," rather than having to satisfy the higher standard of demonstrating a "compelling state interest" for the system. The court determined that the state had met the easier burden of justifying its school-finance system.

State Court Litigation

Lower courts

In 1984 a group representing property-poor Texas school districts renewed the legal challenge to the Texas school-finance system, this time in state court under the provisions of the Texas Constitution. The plaintiffs -- the Edgewood Independent School District, 12 other school districts and 25 families -- were represented by attorneys from the Mexican-American Legal Defense and Educational Fund (MALDEF). Fifty-five plaintiff-intervenor school districts later joined the challenge. The defendants were the commissioner of Education (now William N. Kirby), the state and certain state officials. Subsequently joining the defense were 49 defendant-intervenor school districts. Testimony in the case centered on statistical comparisons

of school-district revenues, expenditures and fiscal capacity, using figures for the 1985-86 school year.

In April, 1987, state Dist. Judge Harley Clark of Austin ruled in Edgewood I.S.D. v. Kirby (Cause No. 362,515, 250th District Court, Travis County) that the school-finance system denied children attending school in property-poor districts the equal protection guaranteed by Art. 1, secs. 3 and 3a of the Texas Constitution. He also found that the system violated the Constitution's requirement that the Legislature provide for an "efficient system of free public schools," found in Art. 7, sec. 1. The judge enjoined the state from continuing to use the current system, but stayed the injunction until Sept. 1, 1989 to allow the Legislature time to enact a remedial plan.

The judge determined that the school-finance system was unconstitutional "because it fails to insure that each school district in the state has the same ability as every other district to obtain, by state legislative appropriation or by local taxation, or both, funds for educational expenditures." Clark said the judgment was not intended to "limit the ability of school districts to raise and spend funds for education greater than that raised or spent by some or all other school districts, so long as each district has available, either through property wealth within its boundaries or state appropriations, the same ability to raise and spend equal amounts per student after taking into consideration the legitimate cost differences in educating students."

Judge Clark highlighted the lack of any "underlying rationale in the district boundaries of many school districts" and found that "neither in their creation nor in their perpetuation has an effort been made to equalize local tax bases."

On Dec. 14, 1988 the Third District Court of Appeals in Austin reversed the lower court ruling and declared the school-finance system to be constitutional (Cause No. 3-87-190-CA). In a 2-1 decision, the appeals court found that education was not a "fundamental" right under the state Constitution, tracking the U.S. Supreme Court's ruling in the Rodriguez case 15 years earlier. Like the U.S. Supreme Court, the state appeals court cautioned that its opinion "should not be viewed as an affirmation that the present school financing system is desirable or that it should continue without change; rather, our conclusion is solely that the system is not in violation of the Constitution of Texas."

The court of appeals also held that defining what constitutes an "efficient" school system under Art. 7, sec. 1 of the state Constitution was a "political question not suitable for judicial review."

The Texas Supreme Court ruling

On Oct. 2, 1989, the Texas Supreme Court unanimously overruled the court of appeals and held that the state's school-finance system violates Art. 7, sec. 1 of the Texas Constitution, which requires the Legislature "to establish and make suitable provision for the support and maintenance of an efficient system of public free schools" to provide "a general diffusion of knowledge." The Supreme Court stayed the district court's injunction against continued use of the current system until May 1, 1990.

The Supreme Court stated explicitly, "We do not now instruct the Legislature as to the specifics of the legislation it should enact; nor do we order it to raise taxes. The Legislature has the primary responsibility to decide how best to achieve an efficient system." However, the court warned,

> "more money allocated under the present system would reduce some of the existing disparities between districts but would at best only postpone the reform that is necessary to make the system efficient. A band-aid will not suffice; the system itself must be changed."

Factual background. The Supreme Court opinion opened with a recitation of some public-school finance statistics, based on the 1985-86 school year, which it said were "not in dispute." The court stated that "there are glaring disparities in the abilities of the various school districts to raise revenues from property taxes because taxable property wealth varies greatly from district to district." These disparities in district property wealth lead to widely varying amounts of spending per student, which has a "real and meaningful impact on the educational opportunity offered" to a student in a property-poor district, said the court.

The Foundation School Program attempts to ensure that each student can be provided with a basic education, but the court found that the FSP did not cover even the cost of meeting state-mandated minimum requirements. In addition, the FSP makes no allotments for school facilities or for debt service, understates the actual costs of instruction and transportation, and underfunds the career ladder teacher salary supplement, according to the opinion. For these reasons, almost all districts must spend additional local funds.

However, property-poor districts must "tax high" just to support a comparatively low level of expenditures, while the wealthiest districts can raise and spend above-average amounts at minimal tax rates. Property-poor districts, with their high tax rates and inadequately funded schools, are unable to attract new industry,

trapping them in a cycle of poverty from which there is no opportunity to free themselves, concluded the court.

Interpretation of "efficient." The Supreme Court overruled the appellate court's holding that the definition of a constitutionally "efficient" school system was "a political question not suitable for judicial review" and declared that it was the court's duty to determine whether the Legislature met the constitutional mandate. To determine the meaning of "efficient," the court said it had to rely on the literal text of the Constitution, seeking its meaning "with the understanding that the Constitution was ratified to function as an organic document to govern society and institutions as they evolve through time."

Art. 7, sec. 1 of the Texas Constitution states:

> "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."

The court rejected the state's argument that the delegates to the 1875 Constitutional Convention intended to suggest a "simple and inexpensive" or "economical" system. Rather, the court held, "efficient" meant "effective or productive of results" and connoted "the use of resources so as to produce results with little waste."

Based on comments in the constitutional debates, and the school-finance structure established by the 1876 Constitution, the court determined that Texans of the time "were contemplating that the tax burden would be shared uniformly and that the state's resources would be distributed on an even, equitable basis." Consequently, the court concluded,

> in mandating "efficiency," the constitutional framers and ratifiers did not intend a system with such vast disparities as now exist. Instead, they state clearly that the purpose of an efficient system was to provide for a "general diffusion of knowledge" (emphasis in opinion). The present system, by contrast, provides not for a diffusion that is general, but for one that is limited and unbalanced. The resultant inequalities are thus directly contrary to the constitutional vision of efficiency.

An examination of legislative enactments over the past 60 years also led the court to conclude that the constitution establishes an "implicit link . . . between efficiency and equality."

The court also stated that an "efficient system" would increase, rather than diminish, local control by providing property-poor districts with new economic alternatives from which to "exercise the control of making choices."

In ruling the school-finance system unconstitutional, the court did not consider the other constitutional arguments raised by the plaintiffs, including the contention that the finance system denied equal protection to children being educated in low-property-wealth districts. The opinion also did not address the issue of school-district organization and boundaries, which had figured prominently in the district court opinion. It noted that the state's contributions to local districts had increased since the 1985-86 school year figures used in the case but indicated that no change had been made in the system.

(The possible prohibition against spending school-district revenue for the benefit of persons who are not residents of the district, based on the 1931 Texas Supreme Court ruling in Love v. City of Dallas (40 S.W.2d 20), also was not discussed. The Love ruling is believed by some observers to rule out the diversion by the state of local property tax revenues raised by one school district to finance programs in other districts.)

Requirements for a new plan. The Supreme Court did not mandate any particular school-finance system, but it did specifically outline several characteristics of an acceptable system. The new system would have to permit "a direct and close correlation between a district's tax effort and the educational resources available to it," in contrast to the current inability of property-poor districts to generate sufficient revenue to meet minimum standards even with high tax rates. Districts must have "substantially equal access to similar revenues per pupil at similar levels of tax effort," and children in all districts "must be afforded a substantially equal opportunity to have access to education funds." (This is a modification of the district court opinion, which would have required all districts to have the same ability to obtain funds.)

The court would permit the state to "recognize differences in area costs or in costs associated with providing an equalized educational opportunity to atypical students or disadvantaged students." (These differences are recognized in the current Foundation School Program through the price differential index and student weights). The court also would permit school districts to supplement state aid, but "any local enrichment must derive solely from local tax effort."

Because the responsibility to support public education is constitutionally imposed, stated the court, "equalizing educational opportunity cannot be relegated to an 'if funds are left over' basis."

Meeting the deadline. The Supreme Court modified the trial court's injunction against distribution of money under the current school-financing system. The trial court had given the defendants until Sept. 1, 1989 to enact a constitutional plan, and until Sept. 1, 1990 to put a modified system "in place," although a new system would not have to be fully implemented by then. The Supreme Court extended the deadline by which the Legislature must adopt a new system until May 1, 1990. The court did not extend the Sept. 1, 1990 deadline by which a new system must be in place.

If the Legislature has not changed the current system by May 1, the injunction against distribution of state money to public schools would take effect immediately. Both Comptroller Bob Bullock and Commissioner of Education William Kirby have stated that they would obey an injunction to stop state aid payments to school districts.

If the Legislature has adopted a new finance plan by May 1, its constitutionality will be determined initially by Dist. Judge Scott McCown of Austin, who was assigned jurisdiction over the Edgewood case by Judge Clark when he resigned from the bench in late 1989. A hearing on the adequacy of any new school-finance system has been tentatively scheduled for May 2. The plaintiffs could either accept a new plan or present any objections they had to its provisions. The plaintiffs and defendants are preparing memos for the judge suggesting his possible course of action should he find that any new school-finance plan has not met the Supreme Court's requirements.

Judge McCown could rule that the new plan fulfilled the Supreme Court's requirements and allow it to go into effect, or he could rule that it failed to pass the constitutional requirements and enforce the injunction against further state financing of public education (subject to possible appeal). The judge also might decide to restructure the school-finance system without changing the total amount of state aid already appropriated. For example, the judge could change the distribution of the Foundation School Program to direct more state aid to poor districts or take such other approach, such as possibly establishing countywide taxing districts, that would not involve raising additional state revenue. Any decision by the judge could be appealed by either side of the suit, ultimately for review by the Texas Supreme Court.

Interpretations of the Supreme Court Opinion

Interpretations of the intent of the Supreme Court in its Edgewood decision have focused on the meaning of "efficient." Gov. Bill Clements, speaking to the Texas Research League on Nov. 17, stressed that the court used the word "efficient" 31 times in its opinion. "Before we start discussing additional revenue . . . we must improve efficiency, effectiveness, the product," he added. "Let's make certain we're getting the quality Texans demand for the more than $13 billion we are now spending on public education."

D. M. Winick, the staff director of the Task Force on Public Education, has stated that "the constitutional issue being argued is equal access to funds (emphasis in original), or fiscal neutrality, rather than the amount of money that is spent." In a speech to the Greater Houston Chamber of Commerce on Oct. 23, Winick said that the Supreme Court opinion "does not suggest that expenditures must be higher or lower or that similar amounts must be spent on each student." He distinguished two independent issues -- access to funds (fiscal neutrality) and adequacy of support -- and concluded that the fiscally neutral funding required by the court would not necessarily be very expensive.

A contrary opinion was voiced by Billy D. Walker, a member of the Task Force appointed by Lt. Gov. Bill Hobby, in "What Did the Texas Supreme Court Say About Remedies in Edgewood I.S.D. v. Kirby? (Texas Center for Educational Research, October 1989). Walker concluded, "The Edgewood opinion makes a strong statement about the adequacy of state support (emphasis in original)," which Walker defined as "sufficiency of resource inputs in amounts proper to ensure desired outcomes." In his view, "The need for additional state aid in the system is axiomatic. The equity of the system cannot be improved significantly by simply redistributing state aid or even by reorganizing school districts on a logical basis."

SCHOOL-FINANCE PROPOSALS

Various organizations and individuals have responded to the Supreme Court's Edgewood decision with proposals to revise the Texas school-finance system. The details of the proposals may change during the legislative process and new plans likely will be offered. But certain recurring themes are apparent in many of the proposals.

Additional Education Spending

Many of the school-finance proposals under discussion would require substantial increases in education spending. However, the Texas Research League staff has offered a plan to "simply spread more evenly what is now spent." Gov. Bill Clements contends that reforms to improve education must precede discussions of adding revenue. "Money alone is not the answer," Clements has said.

Some who argue against new education spending contend that equal access to funds is all that the Supreme Court will require of a constitutional system. Those who support new spending counter that the adequacy of support is a critical issue in meeting court requirements and cite figures showing that Texas per-pupil spending is below the national average.

The U.S. Department of Education estimates that the national average operating expenditure per pupil for 1989-90 is $4,448, almost 20 percent higher than the estimated Texas average of $3,717. Texas ranks 33rd in the nation, and ninth among the 10 largest states, in operating expenditures per pupil in 1989-90. The State of Texas provides 42 percent of total school-district revenue, (excluding funds borrowed through bond sales), compared to 49.8 percent nationally.

Legislation filed for the third called session by Sen. Hector Uribe (SB 9) and Rep. Greg Luna (HB 34) would increase the average spent per pupil in average daily attendance to about $4,700 a year in three years. (The bill bases its funding system on weighted students; spending would total $3,400 per weighted student in three years. The weights would raise average per-pupil spending to about $4,700.) By 1992-93 the plan would cost the state $3 billion a year more than it now spends on public education.

Other plans would phase in higher spending over five years, until 1994-95. The Governor's Task Force on Public Education has proposed increasing the average amount spent per student to about $4,150 after five years, which would require the state to increase spending on education in 1994-95 by $1.52 billion a year over the current level. If all school districts raised their tax rates to maximize their state

matching aid under the Task Force proposal, local spending would increase by $379.9 million in 1994-95.

The Equity Center, an association of low-wealth school districts, has proposed that all districts be able to generate about $4,900 in revenue per student after five years at a cost of $3.1 billion in new state spending in the fifth year.

The State Board of Education has recommended a plan that could increase local-district revenue to $4,400 per student by 1994-95, which would require $3.6 billion in additional state aid in that year.

SB 1, filed by Sen. Bill Haley for the third called session and based on a plan developed by Comptroller Bob Bullock, would guarantee total state and local funding of $4,600 per student after five years. No total cost has been estimated for the Haley/Bullock proposal.

A comparison of the minimum per-pupil spending targets proposed by the various groups (assuming that all districts would tax at the rate yielding the maximum state aid) shows the following:

Uribe/G. Luna	$4,700 in three years
Task Force	$4,150 in five years
State Board	$4,400 in five years
Haley/Bullock	$4,600 in five years
Equity Center	$4,900 in five years

The plans proposing increasing education spending use two primary approaches to how the money is delivered to local districts. One approach is to increase the basic allotment and the local fund assignment; the other is a new emphasis on guaranteed-yield taxation.

Increasing the basic allotment and the local fund assignment

The first tier of the current Foundation School Program is calculated from a basic allotment amount, which is adjusted for local cost differences and for the special needs for students within each district. Current law sets the basic allotment at $1,477 per student in average daily attendance for the 1989-90 school year and $1,500 per student thereafter.

The basic allotment is adjusted for various factors, then multiplied times the number of students to arrive at the total statewide cost of the first tier of the FSP. The local fund assignment is the share of the total statewide cost of the FSP that must be raised by local taxes, currently set at one-third (33.3 percent). To raise the local fund assignment for 1989-90, each district must levy a tax rate of 34 cents per $100 in property value.

This tax rate, levied on all taxable property statewide, will raise one-third of the total statewide cost of the FSP. The percentage that each district can raise of its own FSP entitlement at this tax rate will vary according to the taxable wealth of the district.

An increase in the basic allotment, or an increase in the local fund assignment, would require that more money be raised at the local level. To raise the additional revenue, an increase in the minimum tax rate would be required of every district participating in the Foundation School Program.

Several plans put forward in response to the Supreme Court decision would maintain some form of the foundation program and would increase the basic allotment. For example, the Governor's Task Force of Public Education has recommended raising the basic allotment over five years, to $1,750 in the 1990-91 school year and in steps to $2,100 by 1994-95. The local fund assignment would be increased to 39 percent in 1990-91, and raised one point a year until it reached 43 percent after five years. These changes would require an increase in the minimum required local tax rate to 46.9 cents per $100 of property valuation in the first year and to 61.6 cents per $100 after the program was fully implemented in 1994-95.

The State Board of Education on Jan. 13 proposed a plan that would increase the basic allotment to $2,295 per pupil and raise the local fund assignment to 40 percent by 1994-95. This change would require an increase in the minimum required local tax rate to 60 cents per $100 valuation. The SBOE plan also would increase the program weights for students with special needs to reflect the findings of the 1988 accountable costs study, which would direct more FSP money to districts that have a larger number of students with special needs.

The Uribe-G. Luna plan would increase the basic allotment to $2,300 per student in 1990-91 (with $230 of this amount allotted for facilities financing) and $2,070 per student thereafter, with a separate sum for facilities. The plan would require a minimum tax rate of 80 cents per $100 in valuation (but levied on property countywide rather than in individual districts), with the local share equal to whatever was raised at that rate.

Supporters of proposals to increase the basic allotment say the current level is inadequate to cover the costs of even a basic level of education. Since the basic allotment sets a floor for public-school expenditures by every district in the state, increasing the allotment would ensure that every Texas public-school student receives at least a minimally adequate education. They point to the Accountable Costs Advisory Committee study that calculated that the

basic allotment required to fund the minimum basic program should be $1,890 for 1989-90 and $1,973 for 1990-91.

Opponents of increasing the basic allotment say it would increase costs to the state and local districts by putting more money into the current system without any assurance of improving the education received by students. Increasing the basic allotment would increase the minimum required tax rate for all districts, even those that do not wish to increase their local taxes, diminishing local control over schools, say opponents.

Supporters of increasing the local fund assignment say that it would increase the equity of the system by requiring wealthy districts to contribute a larger share of the total cost of education. The amount of revenue that a district raises at the tax rate required to raise the local fund assignment is "charged back" against (subtracted from) the district's entitlement under the Foundation School Program. If a property-rich district can raise more than the basic allotment per student at the local fund assignment rate, it receives no first-tier FSP aid. Increasing the local fund assignment would raise the minimum required tax rate, which would increase the number of districts that can raise the basic allotment from local tax collections and thus get no first-tier FSP aid. State money would therefore be concentrated in the poorer districts that can raise less money at the required tax rate, which would meet a primary objection of the Supreme Court.

Opponents of a higher local fund assignment say the resulting higher minimum tax rate would impose a hardship on many taxpayers. It would also shift the increased cost of public education from the state, which has many sources of revenue, to local districts, which must rely almost exclusively on property taxes.

New emphasis on guaranteed yield

The Texas school-finance system contains a guaranteed-yield component, the second tier of the Foundation School Program. Under current law, as enacted by SB 1019 during the 1989 regular session, the state guarantees each district a revenue yield of $18.25 per weighted student per one-cent of tax rate over the required minimum Local Fund Assignment rate (34 cents per $100 of property value in 1989-90). If the district does not have sufficient property wealth to generate the guaranteed amount on its own, the state makes up the difference, for up to 36 cents over the local fund assignment rate (a total tax rate of 70 cents in 1989-90).

Some observers say the Supreme Court required any new school-finance system to rely on a broader guaranteed-yield program

when it stated in the Edgewood opinion, "Districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort." About one-third of the states have school-finance systems that rely heavily on some form of a guaranteed-yield system.

Several plans put forward in response to the Supreme Court decision would increase the amount of money distributed to local districts through the guaranteed yield program. Some would eliminate the first tier local fund assignment and distribute all state aid on the basis of guaranteed yield.

Governor's task force. The Governor's Task Force on Public Education recommended maintaining the two-tier structure and increasing the guaranteed yield to $19 per student per one cent of tax rate in 1990-91 and to $26 per student per penny by 1994-95. The guaranteed yield would apply up to a maximum tax rate of 47 cents per $100 of property valuation above the local fund assignment tax rate. With proposed changes in the local fund assignment tax rate, the Task Force plan would match local rates up to a total tax rate of $1.09 cents per $100 by 1994-95. This change would increase a district's maximum second-tier revenue from the current $657 per student to $1,222 to student by 1994-95.

The Task Force recommended distributing guaranteed-yield aid according to the number of students in average daily attendance, rather than the according to the number of weighted students, as done currently. Opponents of this change say it would tend to direct guaranteed-yield aid away from poorer districts with large numbers of students with special needs. Supporters of the change say that an expanded first tier would cover the extra costs of educating students with the special needs that are recognized by the weighting system, so that the weights would not have to be taken into account in the distribution of guaranteed-yield aid, too.

State Board of Education. The State Board of Education has offered a proposal that would increase the guaranteed yield to $18.75 per weighted student per one cent of tax rate in 1990-91 and $25 per weighted student per penny by 1994-95. The guaranteed yield would apply up to a maximum tax rate of 66 cents per $100 of property valuation above the local fund assignment tax rate and would increase a district's maximum second-tier revenue to $1,650 per student by 1994-95. The Texas Education Agency estimates that the SBOE proposal would require $406.4 million in new state funds in 1990-91 at current tax rates and $525 million if all districts raised their rates to the maximum rate.

Uribe-G. Luna plan. The Uribe-G. Luna plan would increase the guaranteed yield to $25 per weighted student per one cent of tax rate in 1990-91, $40 in 1991-92 and $50 thereafter. The proposal also would cap the maximum tax rate at 20 cents above the required local fund assignment tax rate.

Texas Research League. The Texas Research League proposes to combine the basic and guaranteed-yield tiers of the Foundation School Program into a single-tier foundation program. But it would add two new guaranteed-yield tiers above the foundation program. One tier would be an optional local enrichment tax of up to 10 cents, with a revenue yield guaranteed to be equal to the statewide average yield (currently $20.90 per student per one-cent of tax). The other tier would be a debt service/capital outlay tax of up to 12.9 cents, which would have the same $20.90 yield for districts with less than the statewide average tax base.

Equity Center plan. Other proposals would replace the current two-tier system with a single-tier guaranteed-yield system. For example, the Equity Center proposes phasing in a guaranteed-yield system that by 1994-95 would guarantee districts $43.75 per student per one-cent of tax rate, up to a tax rate of $1.12 per $100 in property valuation, for a maximum total revenue of $4,900 per student. The maximum tax rate and total revenue generated subsequently would be adjusted based on the tax rate and spending of districts in the top 5 percent of tax rates and school spending.

Haley-Bullock plan. Comptroller Bullock has proposed a one-year plan, described in the December 1989 Fiscal Notes and included in SB 1 by Haley, that would replace the two-tier current system with a guaranteed-yield system that would, in effect, in its first year guarantee districts a revenue of $42.35 per student per one-cent of tax rate, up to a maximum total tax rate of 85 cents per $100 in property value. This plan would generate up to $3,600 per student in its first year.

Single-tier guaranteed-yield programs would allow the state to equalize school districts' ability to raise revenue, letting each district decide on its own spending levels and tax rate. Guaranteed-yield programs are also known as "reward-for-effort" plans, since state aid is tied to a district's tax rate, as well as to its property wealth.

Single-tier guaranteed-yield proposals are intended to directly remedy the most glaring inequity in the current school-finance system -- the huge differences in districts' ability to raise tax revenue. Because of the disparity in taxable wealth per student among districts, the poorest district currently can raise only $2.18 per

student per one-cent of tax rate, while the wealthiest can raise over $700 per student per one-cent of tax rate. An expanded guaranteed-yield system would eliminate much of this difference by guaranteeing equal yields per penny, per student.

However, a guaranteed-yield system is unlikely to eliminate all of the disparity among districts, since it would be prohibitively expensive for the state to guarantee every district the $700 per student per one-cent of tax rate that the richest district can raise. The yield per penny of tax rate therefore would be set at a much lower figure, between the current $18.25 and $50. It has been estimated that a yield of about $45 would equalize funding in about 95 percent of all school districts.

The state also could not afford to guarantee local tax revenue for an unlimited tax rate. Each proposal therefore would limit the tax rate that would be matched, from the current system's 36 cents above the first-tier required rate (currently a total rate of 70 cents) to more than $1.00 in a single-tier system. Other ways to limit the state's revenue commitment include capping the expenditure per student that the state will equalize or capping total state education aid.

Even with a limited yield and tax rate, a guaranteed-yield system can make state fiscal planning difficult. State spending depends on local tax-setting choices, but the state cannot know in advance how many districts will set their taxes at the maximum rate covered by the guaranteed yield. Estimates of the costs of guaranteed-yield plans generally assume that all districts would raise their rates to the maximum rate that would qualify for a guaranteed yield.

Countywide Tax Base

School districts raise almost all of their locally generated income by taxing property within their boundaries. A primary reason for the inequality of funding within the current school-finance system is the disparity in taxable property wealth per student. One means of achieving greater equity in the access to funding by property-poor school districts would be to broaden the property base for school-district property taxes.

Some have proposed using a countywide tax base for levying certain local school taxes. Adoption of a countywide tax base would not require changing school-district boundaries or reduce the control of local school boards over district budgets. A 1988 study for the Select Committee on Tax Equity concluded that countywide school taxation would narrow the disparity among Texas school districts. When comparing property wealth per student, the ratio between the

poorest and the wealthiest school districts is more than 1:250 while the ratio of the poorest to the wealthiest county is about 1:95.

Texas Research League plan

The Texas Research League staff, in the January 1989 issue of "TRL Analysis," proposed that the state calculate the local share of the Foundation School Program (FSP) by county, rather than by district. The TRL proposal also would combine the two tiers of the current FSP into one. The Local Fund Assignment would be increased, and the basic allotment would be set so that total state aid under the new foundation program (plus a guaranteed-yield program for limited local enrichment and facilities aid) would not increase over current levels. Property throughout a county would be taxed at the statewide rate necessary to raise the Local Fund Assignment (estimated to be 65 cents per $100 of valuation, based on the current amount of state FSP aid).

State aid to each county would make up the difference between the FSP entitlement for the county and the money raised through the countywide tax, in a manner similar to the existing system. More state aid per student would flow to poorer counties than to wealthier ones. The countywide total would be distributed on a per-student basis to each school district within the county.

Individual school districts still could levy taxes on property within the district for purposes of enrichment and bond-debt service, on a guaranteed-yield basis. However, the tax rates could not exceed certain maximum levels.

Uribe-G. Luna plan

The Uribe-G. Luna plan also proposes use of a countywide tax base to calculate the Local Fund Assignment of the FSP. The state would make up the difference between the revenue raised in each county and the county share of the FSP. The state tax rate to be levied by all counties would be set by the Legislature at 80 cents per $100 valuation for the 1990 and 1991 tax years. Unlike the TRL plan, under Uribe-G. Luna the money would be distributed to the school districts within the county on the basis of weighted students, so that districts with students whose special needs require additional spending would receive more funds per capita.

Debate over countywide tax base

Broadening the tax base that supports each district to include a whole county is intended to equalize access to revenue among the school districts within each county. In counties with both

property-rich and property-poor districts, some revenue from a countywide tax collected in rich districts would flow to the poorer districts. Wealthy districts that now support their school system at a tax rate lower than the proposed 65-cent or 80-cent countywide rate, would have to raise their tax rates, sharing the increased revenue raised with poorer districts in the same county. Property-poor districts that tax at rates higher than the proposed countywide rate could lower their rates.

Since most school districts with below-average wealth also are located in counties with below-average wealth, countywide taxation would not, by itself, greatly improve the equity of the school-finance system. A countywide tax base would have the greatest equalizing effect in urban counties such as Dallas and Bexar, which contain both property-rich and property-poor districts of similar size. (The Dallas Independent School District, Dallas County's largest district and an above-average district in terms of per-pupil property values, would lose under a countywide plan.)

In a county like Cameron, which has one small property-rich district (Point Isabel, with 1,972 students and $466,600 in property value per student) and many larger property-poor districts (e.g. Brownsville, with 33,632 students and $52,300 in property value per student), the small property-rich district would lose and the larger, poorer districts would gain only a little.

The Texas Research League plan would augment the equalizing effect of a countywide tax system by changing the Local Fund Assignment and basic allotment to redistribute current levels of state aid away from wealthier counties and concentrate it in poorer counties. The Uribe-G. Luna plan would enhance the equalizing effect of a countywide tax base by increasing the amount of state aid.

One criticism of using a countywide, or larger, tax base is that it would undermine local control of schools. Raising the mandatory tax rate and imposing it countywide and limiting the enrichment tax on property within the district, as the Texas Research League proposes, would, some believe, deprive local school boards of meaningful control of their property tax rates; the loss of control in one area could lead to loss of local authority over other aspects of public education. Another objection is that a countywide tax base would redistribute local tax revenue from rich to poor districts within the same county, which has been described as a "Robin Hood" approach.

Legal objections also have been raised concerning countywide tax bases. A 1931 Texas Supreme Court decision, Love v. City of Dallas, 40 S.W.2d, held that school district tax revenue can be used only for the benefit of the school children of the district in which the

taxable property exists, and the Legislature cannot force the use of local funds for other beneficiaries. Opponents also suggest that a countywide tax could not be imposed without a vote in each county. They cite Tex. Const. Art. 7, sec. 3: "The Legislature may authorize an additional ad valorem tax to be levied with all school districts hereafter formed . . . provided that the majority of voters shall vote for such tax." Opponents contend that a countywide district would be a new district and as such would have to obtain voter approval of any tax.

Another criticism is that a uniform statewide county-tax rate would violate the prohibition against a state property tax. According to a study on regional taxing units for the Tax Equity Committee: "For any type of regional tax to be imposed, local discretion would be necessary to avoid the characteristics of a statewide levy on property. A mandated, uniform regional tax would likely be in conflict with this prohibition." The State Board of Education Committee on School Finance removed a proposed countywide tax from its recommendations to the full Board because of these potential legal problems.

Caps on Local Enrichment

The current Texas school-finance system equalizes revenues per student through the local-fund-assignment mechanism of the first-tier of the Foundation School Program (FSP) and through the guaranteed-yield program that comprises the second-tier of the FSP. One source of inequality in the current system is the ability of districts to set their tax rates above the rates eligible for state matching funds. At these higher rates, property-rich districts can raise more revenue for each additional one-cent of tax rate than can property-poor districts, since no state equalization aid compensates for disparities in property wealth per student.

The current system equalizes revenues received on the minimum local-fund-assignment rate of 34 cents per $100 of property value, and on any higher rate chosen by a district, up to a total tax rate of 70 cents. However, most districts set operating tax rates higher than 70 cents and use the extra revenue to "enrich" local programs through higher teacher salaries, lower pupil-teacher ratios, or additional course offerings, without any equalization by the state. In 1988-89 more than 80 percent of school districts levied operating taxes at rates higher than those eligible for state equalization.

One criticism of the current system is that as long as districts are free to set their tax rates above those covered by equalization programs, the school-finance system inevitably will favor

property-rich districts. For example, HB 72 (1984), which increased state spending through the Foundation School Program (FSP) by $1 billion a year and directed more money to property-poor districts under a new equalization system, did not limit local enrichment. The increase in equality from higher state spending was negated by the increase in unequalized local taxes levied for enrichment.

The Texas Research League has proposed capping local enrichment taxes at 10 cents above the tax rate required to meet the local fund assignment. The state would guarantee the yield on this optional enrichment tax for districts with less than the statewide average tax base. The Uribe-G. Luna plan would cap an optional local enrichment tax rate at 20 cents above the required local-fund-assignment rate and guarantee the revenue yield. Neither plan would permit unequalized enrichment above the prescribed maximum tax rates. The Uribe-G. Luna plan also would set a limit on the amount per weighted student that any district could raise, even below the maximum tax rate.

Supporters of a limit on local revenue-raising argue that a cap would bring together the interests of wealthy and poor districts in seeking additional state funding. Wealthy districts currently have no reason to lobby for more state education funding, since their budgets are largely unaffected by state funding formulas. If there were a limit on local enrichment, the only way for a wealthy district to enrich its local program would be to increase the amount it (and all other districts) could raise under a guaranteed-yield program.

A criticism of a cap on local enrichment is that it would force high-spending districts to level-down spending, despite local willingness to spend more on education. For instance, under the plan described by the Texas Research League, six of the 50 largest districts would lose educational resources unless voters approved an enrichment tax, and 15 other large districts would lose revenue no matter what local voters wanted. The Uribe-G. Luna plan would, after it was fully implemented, reduce revenue in 73 districts in the state, despite a much higher average level of spending overall. Opponents of a cap say communities willing to pay for top-quality education should not be held back by the financial shortcomings of other districts.

The Edgewood decision does not appear to rule out continued local enrichment. The Supreme Court stated, "Nor does it mean that local communities would be precluded from supplementing an efficient system established by the legislature; however any local enrichment must derive solely from local tax effort."

Some observers argue that the choice of the words "local tax effort," rather than simply "local taxes," implies that any local enrichment above a foundation level must be part of a guaranteed-yield

system that would equalize revenues per penny of tax rate. Others say that the Supreme Court would allow optional local expenditures unmatched by state funds, once an "efficient" system was established.

Recapture (Redistribution) of Local Revenues

Another method of limiting wealth disparities among school districts would be to "recapture" a portion of the revenue raised by the wealthiest districts and redistribute it to other districts. For example, under a guaranteed-yield system that assured each district a revenue of $40 per student for each one-cent of tax rate, a district that had sufficient property wealth to generate $50 per student per one-cent of taxes would be permitted to keep only $40 per student. The remaining $10 per student would be returned to the state to fund the guaranteed yield for less wealthy districts. There would not necessarily be a limit on the tax rate a district could levy, but the revenue the district could retain per penny of tax rate would be capped.

A countywide tax base has elements of recapture, since some of the revenue raised from high-value property within a wealthy school district in effect would be distributed to less wealthy districts within the same county.

One advantage of recapture is that it offers a way to equalize funding among school districts without requiring large amounts of new state spending. Wealthy districts would have an incentive to increase their tax rates in order to support the level of spending to which they had become accustomed. Yet these higher rates also would generate new income that could be redistributed within the school-finance system in place of state tax money.

Critics say recapture would diminish local control of schools, since school districts would not be able to spend all of their tax revenue on their own programs. If school boards lose control of their tax revenue, they will eventually lose authority in other areas. Opponents say that recapture is a "soak-the-rich" approach that would lower the quality of education in wealthy districts. They also raise legal objections based on the Supreme Court's 1931 ruling Love v. City of Dallas (40 S.W.2d) that prohibits the use of revenue raised by one school district for the benefit of students in another district.

Distribution of Available School Fund

The state Constitution dedicates to the Available School Fund (ASF) investment earnings from the Permanent School Fund and one-quarter of motor-fuels tax revenue. A portion of the ASF is used to purchase free textbooks for public-school students. The remainder

of the fund is distributed "to the several counties according to their scholastic population." (Tex. Const. Art. 7 sec. 5).

The term "scholastic population" currently is defined as pupils in average daily attendance (Educ. Code, sec. 15.01(c)). The Uribe-G. Luna plan would amend this definition to require the ASF to be distributed according to the number of weighted students in average daily attendance. The Governor's Task Force on Public Education recommended that the Constitution be amended to allow distribution of the ASF "in a wealth-neutral manner," without a specific proposal.

Supporters of ASF distribution based on weighted students say the current per-student ASF allocation tends to counteract the equalizing effect of the weighting formulas used under the current Foundation School Program, which provide greater assistance to students with special, more expensive, needs. Since poorer districts tend to have more students with special needs, distribution of the ASF by weighted student would help lessen the inequality of the current system.

Opponents of changing the distribution of the ASF say the change would eliminate the only source of direct state aid to budget-balanced districts, which now receive no other state aid under the Foundation School Program. The framers of the state Constitution intended the ASF to be shared equally by all Texas students, without regard to whether the student requires bilingual education or vocational education or happens to live in a property-rich district, they argue.

Transitional Funding

One way to soften the impact on local expenditures of a limit on local enrichment taxes or a redirection of state aid would be to phase in new restrictions or phase out state aid. For example, SB 1019 (1989) included a "hold-harmless" provision that guaranteed that, for the 1989-90 school year, no district will receive less state aid per student under the new guaranteed-yield program than it received under the prior enrichment equalization allotment during the 1988-89 school year (Education Code, sec. 16.303(b)).

The plan proposed by Comptroller Bullock would assure that each district would continue to receive state aid equal to at least a certain percentage of the state aid it received in 1989-90. In 1990-91 each district would receive at least 80 percent of its previous state-aid level, as long as it did not reduce its tax rate. The percentage would drop each year until it reached zero in 1995-96. The Uribe-G Luna proposal, which eventually would cap revenue per student, would permit school districts to use local tax revenue to maintain their 1989-90 revenue per student for the 1990-91 and 1991-92 school years.

State Aid for Capital Expenditures

The current school-finance system provides little state aid to local school districts for capital expenditures, including construction of facilities, purchase of equipment and repayment of bonds. The guaranteed-yield program enacted in 1989 allows districts to use their allotment under the program for any legal purpose, specifically including capital outlay and debt service. The Permanent School Fund may be used to guarantee the repayment of bonds issued by local school districts (Tex. Const. Art. 7, sec. 5(b)). The new School Facilities Aid Fund, financed by up to $750 million in state revenue bonds, will be used to provide low-interest loans to local school districts to reduce their cost of financing facilities. But no state aid is earmarked specifically for financing facilities.

The Supreme Court noted that, since there is no specific state-aid allotment for school facilities or for bond debt service, "low-wealth districts use a significantly greater proportion of their local funds to pay the debt service on construction bonds while high-wealth districts are able to use their funds to pay for a wide array of enrichment programs." Most of the recent school-finance proposals therefore include some provision to equalize school districts' ability to finance capital outlays.

The Governor's Task Force on Public Education would spend $5 million in 1990-91 to fund an inventory of school facilities and a study of current needs, then appropriate $100 million a year in 1991-92 and 1992-93 to a facilities development fund to alleviate emergency needs until a final facilities-support policy was developed. State aid under the guaranteed-yield program could continue to be used for debt-service payments.

The Uribe-G. Luna plan would allow districts to use 10 percent of their Foundation School Program funds in 1990-91 for facilities, equal to about $400 per student. Thereafter, facilities would be funded by a separate entitlement based on the age of classrooms, outstanding debt and enrollment growth within the school district.

The Bullock plan would include a facilities allotment of $300 per student in the first year of his proposed guaranteed-yield plan. In addition, $200 million in state general-obligation bonds would be used to provide grants and low-interest loans to local districts for facilities projects.

The proposal by the Texas Research League would create a third tier (above a foundation program and a new guaranteed-yield enrichment tier) that would guarantee the revenue yield on debt service taxes

levied by districts with below-average property wealth. The guarantee would provide the state average tax revenue per student for each one-cent of tax effort (about $20.90 per student per one-cent) up to the state average debt-service tax rate (currently 12.9 cents per $100 of property value). Decisions on all capital outlays and construction would remain at the local level.

The State Board of Education has proposed an emergency facilities grant program of $100 million directed to districts with the greatest need to construct or renovate facilities. The board also has recommended that the state provide about 50 percent of the annual capital costs of accommodating growth in student population, meeting the maximum class-size requirement, and renovating structures to support educational technology, at an estimated cost to the state of $463.5 million. In addition, the SBOE would have the state establish a guaranteed-yield program to cover the debt-service costs of local districts.

Changing Weights for Special Programs

Under the current school-finance system, districts receive extra money for special education, vocational education, gifted and talented, compensatory education and bilingual education programs. These additional distributions are determined by multiplying the number of students in each special program by a weight assigned to each program. The resulting number is referred to as the number of "weighted students." A change in the weights assigned to each category of student would change the amount of money received by each district.

Several of the funding proposals would keep the weighted-student approach but would alter the weights. For example, the Equity Center would temporarily increase the weight for bilingual education from the current 0.1 to 0.26 and the weight for compensatory education (for children in the national school lunch program) from 0.2 to 0.3, which would direct more money to districts with non-English-speaking or low-income students. The State Board of Education plan would increase the weights for all special programs. Others have proposed regular review of the weights assigned to various programs to ensure that they reflect current costs.

The Governor's Task Force of Public Education would distribute guaranteed-yield aid according to the number of students in average daily attendance, rather than according to the number of weighted students, as done currently. This change would direct guaranteed-yield aid away from districts with large numbers of students with special needs, which also tend to be districts with less taxable property wealth per student.

Dedication of Additional Money to Fund Formulas

HB 72 (1984) established a "sum certain" ceiling on state spending under the Foundation School Program. If the total state share of the FSP, as calculated by the formulas governing the program, is greater than the total amount actually appropriated by the Legislature for the FSP for that year, each district's allocation of state funds must be reduced according to a formula adopted by the State Board of Education. The formula takes into account a district's wealth, so that property-poor districts lose proportionately less state aid than wealthier districts.

Current shortfall

On Feb. 9 the Texas Education Agency announced that public-school enrollment for 1989-90 was 11,000 greater than was estimated when the "sum certain" was calculated. The number of students eligible for compensatory education aid was also underestimated by 30,500. The amount appropriated by the Legislature would be $45 million less than necessary to cover the resulting increased cost of the FSP for 1989-90 and $64 million short of the requirement for 1990-91.

The anticipated shortfall could be eliminated by an emergency appropriation from general revenue, if available, or by any increase in the income received by the Available School Fund or Foundation School Fund over the amount estimated in the general appropriations bill. If the state is unable to eliminate the shortfall, districts will receive less state aid than anticipated. Until districts can raise their tax rates, which are set in the summer for taxes to be collected the next January, they would have to reduce their expenditures or dip into reserve funds.

Education spending priority

The Supreme Court, in the Edgewood decision, stated, "In setting appropriations, the legislature must establish priorities according to constitutional mandate; equalizing educational opportunity cannot be relegated to an 'if funds are left over' basis." Many observers interpret this to mean that any new school-finance program must be given priority in the distribution of state funds, eliminating the "sum certain" ceiling.

The State Board of Education recommends that the amount necessary to fully fund statutory FSP formulas be given a "first statutory call" on the state's general revenues. The Equity Center proposes a "doomsday" provision that would shut down the public schools if a shortfall in state aid in one year was not corrected by the

Legislature for the next year. The Bullock proposal (SB 1 by Haley) would require the Foundation School Fund Budget Committee, consisting of the governor, lieutenant governor and comptroller, to deposit into the Foundation School Fund the amount necessary to fully fund the Foundation School Program. The amount deposited would be unavailable for spending for any other purpose without a four-fifths vote of both houses of the legislature.

Increased Teacher Salaries

The National Education Association estimates that the national average salary of a public school teacher was $28,008 in 1987-88, while the average Texas teacher salary was $25,558. Texas ranked 26th nationally, and ninth of the 10 largest states, in average teacher salary in 1987-88.

The State Board of Education would increase teacher salaries by an average of $2,000 by 1993 and increase fringe benefits by enacting a statewide group health and life insurance program. Comptroller Bullock would earmark for teacher salary increases at least 58 percent of new state aid under his proposed finance system, producing an immediate $1,450 increase in the average teacher salary, with more increases as the system was phased in.

Texas school districts with below-average property wealth paid an average salary of $23,206 (not including career ladder or other supplements) in 1987-88, while districts with above average wealth paid $24,974, according to TEA figures. In order to eliminate this disparity, it has been suggested that the current state salary schedule, which mandates minimum monthly salaries based on experience, be replaced with a mandatory statewide salary schedule, which would equalize salaries across the state. Opponents of a uniform salary schedule say that it would ignore differences in cost-of-living and amenities in various areas of the state and would lessen local control over a major part of a school district's budget. If a new finance system equalized access to revenues, every district would have an equal opportunity to raise the money necessary to attract competent teachers, opponents say, so there would be no reason to impose a mandatory salary schedule.

School-District Consolidation

Because the Supreme Court opinion in the Edgewood case identified the variation among school districts in taxable property wealth as the source of the unconstitutional disparity in education funding, some have concluded that the consolidation of some districts might be necessary to satisfy the court's financing requirements.

For example, in November 1989, Gov. Clements said that the large number of school districts in the state lay "right at the heart" of school-finance issue and that the Task Force on Education should consider requiring the consolidation of some districts. The governor also noted that "there is no more controversial issue in the state of Texas than consolidation of school districts."

Opponents of consolidation say that local schools, particularly high school football teams, are frequently the source of community identification in smaller districts throughout the state. They argue that smaller schools can offer better education through individual treatment of each student, increased parental involvement and better communication between teachers and administration. Consolidation could create districts too large to run efficiently, especially in rural areas where students live relatively far apart, increasing costs by requiring additional administrators and higher transportation costs.

Some who oppose mandatory consolidation have stated that they would not oppose improved financial incentives to encourage small districts to consolidate voluntarily. Current state law guarantees that, when two or more districts consolidate, the new district will not receive less state aid per student than the separate districts would have received had they not consolidated.

Supporters of consolidation say combining small districts could result in lower costs from the reduction of duplication of administrative staffs and support services, such as school-bus maintenance. There also are social costs of maintaining certain districts in urban areas that perpetuate racial and ethnic imbalances. Supporters also argue that, since most education policies and procedures are determined at the state level, consolidation would have little effect on the limited control actually exercised by local school boards.

Well over half of the state's districts, 625 out of nearly 1,065 (including special districts) had an average daily attendance of fewer than 1,000 students in 1987-88, according to the Texas Education Agency. The 418 school districts with fewer than 500 students accounted for nearly 40 percent of all districts in the state, but enrolled 3.2 percent of all students.

How to Measure Equity

Several statistical measures are used to judge the equity of a school-finance system. These measures may help in ranking the relative attractiveness of various school-finance alternatives and as

an indicator of how much additional equity can be achieved by changes in certain aspects of funding.

Equity measures

The equity measure chosen depends on the definition of equity. The Supreme Court decision requires that districts have "substantially equal access to similar revenues per pupil at similar levels of tax effort." Therefore, the equity of any new school-finance system might be measured by how much a district's revenue per pupil is dependent on its tax effort rather than on its property wealth, i.e. the "fiscal neutrality" of the system.

Federal Fiscal Neutrality Measure. The most widely used indicator of fiscal neutrality is the Federal Fiscal Neutrality Measure, which is used by the federal government to determine if federal impact-aid payments can be considered as local tax receipts in the calculation of state school-aid payments to local districts. The federal government considers a system to be significantly neutral if 85 percent of total revenue for current expenditures in all school districts in the state is unrelated to each district's property wealth and thus fiscally neutral. The Texas Education Agency has calculated that, under the current system, operating revenues are 76 percent neutral in 1989-90. If debt service is included, the fiscal neutrality of the current system drops by about 5 percentage points.

The federal standard is calculated by dividing school district revenue into five types: first tier of the Foundation School Program, second tier of the FSP, local enrichment above the FSP, other general program funds, and transition aid. Expenditures for capital outlay and debt service are not included in the calculations. Within each type, revenue is classified into neutral and non-neutral amounts. For instance, the neutral amount of local enrichment above the FSP is calculated by figuring the tax yield per penny of tax effort in the poorest school district and multiplying that yield by each district's local enrichment tax rate. The resulting revenue is considered to be neutral, while all local enrichment revenue above that level is classified as non-neutral.

"R-squared" measure. Another common measure of fiscal neutrality is the "r squared" statistic, formally known as the "coefficient of determination." The "r squared" is based on the "correlation coefficient" (or "r"), which measures the extent to which a relationship exists between two sets of numbers. In school finance, it can be used to measure the relationship between a district's property wealth per student and its revenue per student.

The "r squared" (calculated by multiplying "r" by itself, or squaring it) number indicates what percentage of a district's revenue can be explained by its wealth. In a perfectly fiscally neutral system, if all districts taxed at the same tax rate, all would generate the same amount of revenue per student. There would be no relationship between property wealth and revenue, and the "r squared" of the system would be zero. A system in which tnere was no equalization, so that revenue was determined exclusively by district wealth, would have an "r squared" of 1.00. The current Texas school-finance system has an "r squared" of 0.6, indicating that a district's revenue currently can be substantially explained by its property wealth.

Equity goals

It has been suggested that the Legislature could, without committing a specific amount of money for the future, meet the Supreme Court's Sept. 1, 1990 deadline for putting a new system in place by defining a certain standard of equity that would be achieved by the system at a definite point in the future. For instance, the Legislature could commit to funding a system that reached "95 percent equity by 1995" under a specific definition of equity.

Both the State Board of Education and the Equity Center have proposed specific standards to measure equity. The SBOE recommended setting annual fiscal-neutrality targets, such as 80 percent in 1991, 85 percent in 1992, 90 percent in 1993, 90 percent in 1994 and 95 in 1995. The Equity Center calls for "the enactment of a simple and straightforward equity standard and an equally simple and straightforward test of whether the new system meets the equity standard," but specifies that the standards established by the federal government could not be used. Rather, the test would be whether all districts (except for the wealthiest) could raise the same amount of money per student at the same tax rate once the new system was fully implemented.

The calculation of a measure of fiscal neutrality can be affected by the definition of desired neutrality. For instance, the Governor's Task Force of Public Education presented the "wealth neutrality" of the school-finance system at each stage of its recommended five-year plan, based on a calculation of the system's "r squared." (The current system has a "r squared" of 0.6.) Since the task force goal was that "revenue per pupil will not be significantly related to wealth per pupil for at least 95 percent of all students," it calculated the neutrality of its recommended school-finance system for 95 percent of districts, ignoring the revenue per pupil for the wealthiest 5 percent of districts. The task force proposal would reduce the "r squared" of the system to nearly zero after five years

for 95 percent of districts. However, the "r squared" of all districts would be 0.3, indicating that the proposed system would not be fiscally neutral when the revenue per pupil of the wealthiest districts was considered.

All models of proposed school-finance systems must make some assumption about how each district will change its tax rate in response to changes in the system. Most models assume that all local districts would raise their tax rates to maximize the amount of state aid that can receive. For instance, if the state required a local fund assignment tax rate of 70 cents and offered a guaranteed yield on any rate up to 30 cents over the local fund rate, the model would assume that all districts would raise their tax rate to $1.00 (.70 + .30 = 1.00). This assumption would give the greatest cost to the state for any proposal. The Texas Education Agency and Legislative Budget Board are currently discussing which assumptions to make about local district behavior in preparing fiscal notes for school-finance bills. An assumption that not all districts would raise their rates to the maximum eligible for state aid would lower the estimated cost to the state of all plans.

Relatively wealthy districts that receive state aid under the current system might have their aid cut or eliminated under certain proposals. Most models do not assume how a district would react to this loss of aid, although most districts likely would increase their tax rate in order to maintain their accustomed level of total revenue. This increase in locally generated revenue by wealthier districts would counteract the equalizing effect of the proposed finance-system change, diminishing the neutrality of the resulting system.

RECENT SCHOOL-FINANCE CHANGES IN OTHER STATES

Legal challenges to state school-finance systems have been litigated in several states over the past two decades. State Legislatures magazine recently raised the possibility of a "tremendous resurgence" in school finance legislation, launched by rulings made in 1989. State supreme courts in Kentucky and Montana, as well as Texas, found state school-finance systems unconstitutional in 1989. State Legislatures noted in January 1990 that similar cases are pending in Alaska, Connecticut, Indiana, Michigan, Minnesota, New Jersey, North Dakota, Oregon and Tennessee.

Some states are on a second round of school-finance litigation: New Jersey, for instance, had its system struck down in 1973, and a new system was adopted. This new system also was challenged and recently was found wanting by a lower court.

The Texas Supreme Court, in the Edgewood v. Kirby decision, noted that school finance systems had been rejected in recent years by the supreme courts of Arkansas, California, Connecticut, Kentucky, Montana, New Jersey, Washington, West Virginia and Wyoming. The court noted that school-finance systems had been upheld in Arizona, Colorado, Georgia, Idaho, Maryland, New York, Ohio, Oklahoma, Oregon, Pennsylvania and South Carolina.

Kentucky

The 1989 decision by the Kentucky Supreme Court threw out the entire public education system of the state, not just the financing system as in Texas. The decision relied on a state constitutional mandate for an "efficient system of common schools" that resembles the basis for the Edgewood decision. The Kentucky court found that "all parts and parcels" of the current system failed to meet the constitutional mandate, including the laws creating local school districts, school boards and the state education department and laws governing teacher certification and school construction. The court also found that the educational opportunities offered throughout the state, in both rich districts and poor districts, were inadequate.

The Kentucky court specified two basic principles that must be followed by the General Assembly in creating a constitutional system: it must "provide funding which is sufficient to provide each child in Kentucky with a adequate education" and "children who live in the poor districts and the children who live in the rich districts must be given the same opportunity and access to an adequate education. This obligation cannot be shifted to local counties and local school districts." However, local school districts are not "precluded from

enacting these local taxes to supplement the uniform, equal educational effort that the General Assembly must provide." The General Assembly must monitor the state's school system "so that there is no waste, no duplication, no mismanagement at any level."

The comprehensive court decision defines the essential and minimum characteristics of an efficient school system. It specifies that the system must provide each child with oral and written communications skills, knowledge of economic social and political systems, understanding of governmental processes, knowledge of mental and physical wellness, grounding in the arts, sufficient preparation or training to choose and pursue life work, and the level of academic or vocational necessary to compete in academics or the job market.

The Kentucky court has extended its deadline for creation of a satisfactory system, originally set at the adjournment of the General Assembly's 1990 regular session in April, by three months to allow for a special session concentrating on education.

Montana

The Montana Legislature has already changed its school-finance system to meet the Montana Supreme Court's requirement for a new funding formula. The court ruled in early 1989 that Montana's foundation program was too dependent on locally approved property taxes, denying students in poorer districts equal educational opportunity. In response, the legislature increased the state's share of local school costs from 56 percent to 82.5 percent (the Texas state share is about 40 percent), more than doubled the statewide property tax levy from 45 cents per $100 of property value to 95 cents per $100, imposed a 5 percent surcharge on the state individual and corporate income taxes, and earmarked some state lottery revenues for education. The new financing system includes a guaranteed tax base (similar to a guaranteed-yield system) for general funds and retirement costs. The legislature also limited spending increases in wealthy districts, although no district will be required to decrease expenditures from its current level.

New Jersey

The most recent New Jersey decision, by an administrative law judge, is currently under review by the state supreme court. The decision held that the New Jersey system failed to eliminate financing disparities between affluent suburban and poor urban school districts. The challenged school-finance system had been enacted to replace one struck down by the New Jersey Supreme Court in 1973. The old system was found to rely too heavily on local property taxes, which paid 68 percent of the cost of operating public schools. The court said the

system guaranteed that students in tax-poor urban districts would receive an education inferior to that offered students in wealthy suburbs.

The 1973 ruling led to the enactment of a state income tax and a large increase in the percentage of state spending devoted to education. However, the recent ruling found that that revised system was never fully financed at the level anticipated by the state supreme court, which allowed the disparities between rich and poor districts to continue to grow.

When the New Jersey Supreme Court issued its original ruling in April 1973 it gave the state until the end of 1974 to enact a constitutional system. The president of the state senate and the speaker of the assembly appealed the decision to the U.S. Supreme Court with the support of the bipartisan leadership of both houses, although the governor did not join in the appeal. The U.S. Supreme Court refused to hear the appeal in October 1973.

Several proposals to change the school-finance system were made before a June 1974 special session. A ten-member joint legislative committee recommended that high-spending districts be limited to budget increases of 8 percent per year, while districts spending the least be urged to increase expenditures by as much as 20 percent per year. The governor proposed funding increased state aid with a new state personal income tax. As an alternative to an income tax, leading legislators proposed a statewide property tax on business and industrial property or increases in other state taxes. Some legislators contended that substantial increases in overall school expenditures would not necessarily improve the quality of education and proposed incentives to encourage "maximum local effort toward educational improvement."

The state assembly (house) passed the governor's proposed graduated income tax bill in July by a 41 to 38 vote. But the governor withdraw the bill before it reached the state senate, where chances for passage appeared dim, and the summer 1974 special session ended without result.

Facing a year-end deadline, the legislature returned for a second special session after the November 1974 elections. The senate initially passed an amended income tax measure by a one vote margin, but the bill failed to reach final reading. The legislature adjourned for the year without approving a new school-finance system. Some legislators reportedly blamed their inaction on the failure of the court to stipulate the repercussions if the deadline were not met.

After the Jan. 1, 1975 deadline had passed, the governor requested the state supreme court to order the wholesale redistribution of state school aid, withdrawing all of it from wealthier districts and diverting it to poorer one. The plaintiffs asked the court to order the legislature to enact a personal income tax. The supreme court denied these requests in January 1975 and gave the legislature until October 1, 1975 to comply with its ruling.

The governor then proposed freezing state school aid for 1975-76 at the level of the prior year, eliminating normal increases for enrollment growth and inflation. School districts across the state began preparing to cut local budgets and layoff teachers.

On May 23, 1975, the supreme court by 4-2 ordered a limited redistribution of state school aid in 1976 unless the legislature changed the method of financing public schools.

Throughout the summer of 1975 school officials warned that the budget cuts might force them to drop a month from the school year and eliminate many teaching positions. The governor and legislative leaders agreed to allow school districts to spend all of their state aid in six months, rather than over the full year, in order to ease budgetary pressure. This set up the need for additional legislative action in the fall to provide state aid for the remainder of the year.

In September 1975 the legislature enacted a bill guaranteeing a "thorough and efficient" education to every pupil, enacting more equitable state-aid distribution formulas, and mandating a certain amount of new state aid. However, no provision was made to generate the new revenue pledged by the bill.

The supreme court upheld the plan in principle in January 1976. However, the court said that, if the legislature did not raise the revenue adequate to finance the new system, the court might order redistribution of existing school-aid funds in favor or poorer districts. The governor warned that a redistribution would increase local property taxes and stated that the court had only confused the situation by not ordering the legislature to find the money. The court later said it would prohibit any tax money from being spent on public education if the legislature did not act by June 30, which would shut down public schools on July 1, 1976.

On March 16 the state assembly approved a 2-to-4 percent state income tax that leaders said would raise enough to fully finance public education. The senate education committee attached a provision requiring the state to set minimum academic standards, with annual testing and remedial tutoring. On May 19 the senate rejected the income tax bill by a vote of 16 to 23.

On June 17 the senate passed, by 21 to 19, a scaled-down income tax bill that would have imposed a 1.5-percent tax with proceeds earmarked for public education. But on June 21 the assembly rejected the senate version by 77 to 2. Meanwhile, the school boards association asked all eleven New Jersey federal district judges to decide if the federal courts could reopen public schools closed by the state supreme court. Similar suits were filed by the U.S. Attorney's Office and the Republican minority of the assembly.

On July 1 the state supreme court ordered the public schools to close, halting summer school and special education programs. The special panel of federal judges refused to enjoin the order on the ground it would not force the state to perpetuate a violation of its own constitution.

After the legislature met through two all-night sessions in an unsuccessful attempt to gain consensus on a tax bill, the assembly on July 7 approved a 2-to-2.5 percent income-tax bill by the minimum number of votes needed for passage. The senate passed the bill the next day by one vote more than the number needed. The governor signed the bill one hour later, and the supreme court lifted the injunction. The tax bill was expected to fully fund the revised school-finance system for at least three years.

Other States

Other states have acted to change their school-finance systems without court-imposed deadlines. Colorado overhauled its school-finance system in 1988, allocating revenue to groups of districts based on size, location, and expenditure patterns. Iowa adopted a plan to increase its per-pupil guarantee and change adjustments for enrollment decline by 1991. Michigan, Nebraska, Oregon and Wyoming have recently completed reviews of their finance systems.

In the fall of 1988, California voters approved Proposition 98, which guarantees that state school aid will not fall below the previous year's budget, adjusted for inflation and enrollment, and allocates a minimum percentage of the state's general fund to education. The state also is required to spend part of any state-budget surplus on schools and community colleges.

However, school-finance reform has been rejected in some states. Louisiana and Arkansas failed to secure sufficient support for tax measures that would have generated additional funds for education. Louisiana voters rejected a proposed constitutional amendment that would have allowed local school boards to levy taxes and lowered the

current property-tax exemption of $75,000. The Arkansas legislature refused to adopt a tax measure proposed by the governor that would have allowed a referendum on a sales-tax increases, effectively blocking increased funding for Arkansas schools.

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